IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5851 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KISHORKUMAR RAMDAS PATEL

Versus

KHEDA DISTRICT PANCHAYAT THROUGH DDO

Appearance:

MR JA ADESHRA for Petitioner

MR RA MISHRA for Respondents

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 03/07/2000

ORAL JUDGEMENT

Rule. Mr RA Mishra waives service of Rule. In the facts and circumstances of the case, the petition is taken up for final disposal today, as was indicated while issuing notice.

2. In this petition under Article 226 of the Constitution, the petitioner has challenged the inaction on the part of the then Kheda District Panchayat (which is now Anand District Panchayat) in not complying with

the order dated 9.7.1997 passed by the State Government through the Deputy Secretary in the Panchayat, Rural Housing & Rural Development Department.

3. There is a primary health centre at Vasad. The nurses working in the said primary health centre are residing in nurse staff quarters at a place which is away from the primary health centre. The said nurse staff quarters belong to the District Panchayat. The petitioner who is the owner and resident of the premises adjacent to the said old nurse staff quarters made a proposal to the District Panchayat that he was in need of larger premises and he was prepared to purchase the old nurse staff quarters and in the alternative he submitted a proposal that he will construct new nurse staff quarters in the primary health centre compound at his own expense and that the old nurse staff quarters may be handed over to the petitioner in exchange for such new construction. The District Panchayat agreed subject to the condition that the petitioner had to pay the price for the land below the old nurse staff quarters. That resolution was passed by the Kheda District Panchayat on 24.5.1984 vide Resolution No. 662. Ultimately on 17.1.1992 the Chief Medical Officer of the Kheda District Panchayat conveyed to the petitioner the decision of the District Panchayat to sell the old nurse staff quarters to the petitioner on the condition that the petitioner should construct new nurse staff quarters in the compound of the primary health centre at Vasad. Various other terms and conditions were imposed including the condition that on completion of construction of the new nurse staff quarters, the petitioner would be given possession of the old nurse staff quarters. Inspite of the said decision, subsequently however, the District Panchayat sought to resile from the aforesaid decision and passed resolution dated 27.7.1992 (No. 1588) by which it sought to back out from the previous agreement with the petitioner. Hence, the petitioner preferred a revision application before the State Government which came to be allowed by the State Government vide its order dated 9.7.1997 (Annexure "A" to the petition).

It is pertinent to note that pursuant to the previous decision dated 17.1.1992 of the District Panchayat, the petitioner had proceeded with the construction of the new nurse staff quarters in the compound of primary health centre and completed the same by October, 1992 and the petitioner had also informed the District Panchayat accordingly. However, on account of the intransigent stand of the District Panchayat, even after the decision of the State Government on 9.7.1997,

the petitioner's investment for the construction of the new nurse staff quarters was lying idle as the petitioner did not get the old nurse staff quarters.

4. In response to the notice issued by this Court, Mr RA Mishra, learned counsel appears for the Anand District Panchayat as the then Kheda District Panchayat is bifurcated into Kheda District Panchayat and Anand District Panchayat. Vasad falls within the jurisdiction of Anand District Panchayat. Affidavit in reply is filed by F.P. Halani, District Development Officer, Anand stating that since the petitioner had not paid the price of the land below the old nurse staff quarters, the petitioner cannot be granted possession of the old nurse staff quarters. However, no other reason is given in the affidavit.

5. Having heard the learned counsel for the parties, it transpires that no steps have been taken by the Anand District Panchayat so far to implement the State Government decision dated 9.7.1997 at Annexure "A" to the petition. There is nothing on record to indicate that the Anand District Panchayat or its predecessors had fixed the price of the land and called upon the petitioner to pay the same to the Panchayat. A xerox copy of the rojkam dated 2.2.2000 is sought to the produced by Mr Mishra for the District Panchayat to point out some deficiencies in the construction. However, there is no dispute about the fact that the construction of the new nurse staff quarters was completed as far back as in October, 1992 and that the petitioner has been moving the District Panchayat ever since then to implement the previous decision dated 17.1.1992. If the present condition of the new nurse staff quarters is not as good as it ought to be, the District Panchayat must blame itself for not implementing the decision immediately in 1992 or even thereafter in 1997 when the State Government put an end to the controversy by passing the order dated 9.7.1997 at Annexure "A".

6. In the result, the petition is disposed of in terms of the following directions :-

(i) The Anand District Panchayat shall fix price of the land below the old nurse staff quarters and the land appurtenant thereto, if any, as on 19.10.1992 (when the petitioner completed the construction and informed the District Panchayat) within two months from today and the same shall be intimated to the petitioner by RPAD. Within one month thereafter, the petitioner shall pay

the price as aforesaid to the District Panchayat for the land in question.

(ii) Upon the petitioner paying the aforesaid price to the District Panchayat and the petitioner replacing the missing/broken doors and windows and whitewashing the quarters, the District Panchayat shall take over possession of the new nurse staff quarters in the primary health centre compound and also hand over vacant and peaceful possession of the old nurse staff quarters alongwith the land to the petitioner as per Resolution No. 662 dated 24.5.1984.

7. Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

July 3, 2000 (M.S. Shah, J.)
sundar/-